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OF COUNSEL
JOHN J. DUFFY (1925-2023)
MICHAEL B. TITOWSKY

October 3, 2024

BY ECF

Honorable Valerie E. Caproni
United States District Court – Southern District of New York
40 Foley Square
New York, New York 10007

Re: **MOTION FOR PERMISSION TO FILE A
SECOND AMENDED COMPLAINT**
Vestuti v. Marriott International, Inc.
1:24-cv-04039-VEC
Date of Incident: March 26, 2024
Our File No.: MD77512

Dear Hon. Caproni:

My office represents the plaintiff in the above referenced matter.

On behalf of the plaintiff, I respectfully request permission to file a second amended complaint.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/4/24

By way of background, the instant matter involves a slip and fall incident that took place on March 26, 2024, while the plaintiff was vacationing at a Marriott Resort located in St. Kitt/Nevis. It is alleged that the plaintiff was caused to fall as a result of certain defective conditions in the common area of the resort property.

A summons and complaint were filed by the plaintiff May 28, 2024. (See USDC SDNY ECF Docket No.: 4) The summons and complaint listed Marriott International, Inc. as the only defendant. Marriott International, Inc. was listed as the defendant based on my conversations with the plaintiff and also by review of the Marriott Resort website on the internet.

After filing the summons and complaint, I was contacted by counsel for the Marriott Resort who advised me that the resort property was subject to a franchise agreement between Marriott Worldwide Corporation and Royal St. Kitts Beach Resort Limited.

Immediately, after being advised of these new entities, I contacted the court and counsel for the defendants to advise that, with the Court's permission, I intended to add Marriott Worldwide Corporation and Royal St. Kitts Beach Resort Limited as defendants. (See USDC SDNY ECF Docket No.: 13)

On August 23, 2024, I filed an amended summons and complaint which added the two new entities as defendants – Marriott Worldwide Corporation and Royal St. Kitts Beach Resort Limited. (See USDC SDNY ECF Docket No.: 16)

On September 14, 2024, the defendants filed a motion to dismiss for lack of jurisdiction. (See USDC SDNY ECF Docket No.: 24)

In response to defendants' motion to dismiss, plaintiff filed a second amended summons and complaint on September 24, 2024, pursuant to FRCP 15(a)(1)(B). (See USDC SDNY ECF Docket No.: 27) The second amended summons and complaint was filed within 21 days after the filing of the defendants' motion to dismiss. I failed to request permission for the filing of the second amended complaint as the filing was done pursuant to FRCP 15.

Plaintiff respectfully requests that the Court grant permission to plaintiff to file the second amended summons and complaint at this time.

GOOD FAITH MEET AND CONFER WITH OPPOSING COUNSEL

On October 3, 2024, I spoke to counsel for the defendants, Thomas Maroney, Esq., Clyde & Co. USS LLP, to request their consent to the filing of a second amended summons and complaint. Mr. Maroney advised me that his client was unable to consent to the filing of same. As such, the instant application is being submitted to the Court.

I thank you for your time and consideration.

Very truly yours,

Kevin F. Mahon

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Cc by ECF

Clyde & Co.

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Royal St. Kitts Beach Resort Limited

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Attn.: Thomas Maroney, Esq.

Audree Maldonado, Esq.

Application GRANTED. Plaintiff must file a clean version of the Second Amended Complaint by no later than October 8, 2024. Federal Rule of Civil Procedure 15 allows a Plaintiff to amend the pleading *once* as a matter of right either 21 days after serving it *or* in response to a responsive pleading. Plaintiff had already filed the Amended Complaint on August 15, 2024 as of right. Therefore, any additional amended pleadings must either be on a motion or with consent.

In light of Plaintiff's Second Amended Complaint, Defendants' Motion to Dismiss at Dkt. 24 is DENIED without prejudice as moot. The Clerk of Court is respectfully directed to terminate the open motions at Dkt. entries 24 and 29.

SO ORDERED. 10/4/2024



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE